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October 11, 1996

VIA HAND DELIVERY

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
Room #222
1919 M Street, N.W.
Washington, DC 20554

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OCT 11 1996

Federal Communications Commission
Office of Secretary

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**Re: In Re The Matter Of Section 257 Proceeding To Identify
And Eliminate Market Entry Barriers For Small Businesses
GN Docket No. 96-113**

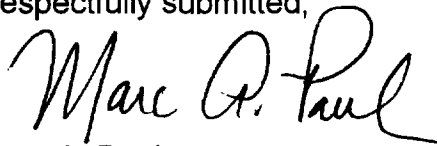
Dear Mr. Caton:

Enclosed please find for filing on behalf of Motorola Satellite Communications, Inc. ("Motorola") an original and six copies of Motorola's Reply Comments in connection with the above-referenced proceeding.

Also, enclosed please find one copy of Motorola's Reply Comments to be date stamped and returned with our messenger.

If there are any questions concerning this filing, please do not hesitate to contact me.

Respectfully submitted,



Marc A. Paul
Counsel for Motorola Satellite
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/srh-m
Enclosures

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OCT 11 1996

Federal Communications Commission
Office of Secretary

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In re the Matter of

**Section 257 Proceeding To
Identify And Eliminate Market Entry
Barriers For Small Businesses**

GN Docket No. 96-113

REPLY COMMENTS

I. INTRODUCTION

Motorola Satellite Communications, Inc., a wholly owned subsidiary of Motorola, Inc. ("Motorola"), hereby respectfully submits its Reply Comments in response to the comments submitted in the Commission's Notice of Inquiry to identify and eliminate market entry barriers for small businesses.^{1/}

In their Comments in this proceeding, Mobile Communications Holdings, Inc. ("MCHI") and Orion Network Systems, Inc. ("Orion") have requested that the Commission, pursuant to Section 257, adopt a more flexible financial standard for applicants in the satellite industry in order to accommodate the difficulties confronting small businesses in raising funds.^{2/} In particular, MCHI has asked the Commission to

^{1/} In the Matter of Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Notice of Inquiry, FCC 96-216 (rel. May 21, 1996) ("Small Business NOI").

^{2/} See MCHI Comments (filed Sept. 10, 1996); Orion Comments (filed Sept. 27, 1996).

lessen immediately the financial standard adopted for Big LEO MSS systems.^{3/} Until the Commission has done so, MCHI requests that it grant MCHI a waiver of the Commission's Big LEO MSS financial qualifications.^{4/}

The Commission should reject MCHI's request for three reasons.

First, this proceeding is obviously not the proper forum for the Commission's reconsideration of the Big LEO MSS financial standard or for consideration of a waiver of that standard as it applies to MCHI's pending applications. The Big LEO MSS financial standard has already been adopted, implemented, and reconsidered by the Commission. Any residual complaints by MCHI should be brought to the U.S. Court of Appeals and not through this proceeding. Section 257 does not require the Commission to ignore the public interest determination it has already made in the Big LEO Report and Order.

Second, contrary to MCHI's arguments, the Big LEO MSS financial standard does not erect discriminatory and unfair market entry barriers to participation by small businesses. Instead, the financial standard is intended to protect scarce and valuable spectral resources from being wasted by underfinanced applicants.

A "flexible" financial standard more self-accommodating to applicants like MCHI runs the serious risk of allowing an applicant to "warehouse" valuable resources and depriving qualified applicants of the opportunity to provide expeditious service to the public. Such a result is not in the public interest.

Third, to the extent that small businesses are unable to satisfy the Commission's financial standard, these small businesses still have significant opportunities to participate in the Big LEO MSS market (e.g., by investing in one of the

^{3/} MCHI Comments at ii.

^{4/} Id.

systems that is financially qualified, by becoming a service provider, and by leasing and/or buying space station capacity).

Accordingly, the Commission should reject MCHI's and Orion's comments, which seek a more lenient financial standard for satellite systems. In particular, the Commission should decline to adopt MCHI's request to modify the stringent financial standard for Big LEO MSS systems.

II. THIS PROCEEDING IS NOT THE PROPER FORUM TO CHALLENGE THE BIG LEO FINANCIAL STANDARD

MCHI has suggested that the Commission revise the Big LEO MSS financial standard to allow for "flexible financial showings;" and, until those rules can be revised, the Commission should use "existing tools," including waivers, when reviewing the financial showings of small businesses, such as MCHI.^{5/} This proceeding is not the proper forum for the Commission to grant MCHI a waiver or to revise the Big LEO MSS rules, which were adopted just two years ago after a lengthy rulemaking proceeding.

MCHI's arguments requesting the adoption of a relaxed financial standard for Big LEO MSS systems have already been heard, reconsidered, and rejected by the Commission.^{6/} Indeed, the Commission rejected the adoption of a relaxed financial standard while recognizing the impact it would have on small businesses.^{7/} The

^{5/} MCHI Comments at ii, 4.

^{6/} See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936 (1994) ("Big LEO Report and Order"); Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, Memorandum Opinion and Order, FCC 96-54 (1996).

^{7/} Big LEO Report and Order, 9 FCC Rcd 5936 at ¶ 26 (1994) (recognizing that participation in the satellite services market by "smaller firms" can take other forms besides ownership). See also Amendment of the Commission's Rules to Establish

(continued ...)

Commission determined that, although a stringent financial standard would make it difficult for "smaller firms" to raise the required capital to satisfy the Commission's standard, the public interest required a stringent standard so that spectrum was not tied up for years and service was not delayed to the public.^{8/} Section 257 does not require the Commission to ignore this public interest determination and revise its Big LEO MSS rules.^{9/} Moreover, the proper forum for MCHI to express any lingering concerns with the Big LEO MSS financial standard is in its pending court appeal and not in the Small Business NOI.

Similarly, this is not the proper forum to grant MCHI a waiver of the Commission's financial qualifications.^{10/} The Commission's experience with granting waivers to satellite applicants clearly demonstrates that scarce resources often go unused. For example, the inability of Norris Satellite Communications to raise sufficient capital for its Ka-band satellite system, despite receiving a waiver from the

^{7/} (... continued)

Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, NPRM, FCC 94-11 at ¶ 27 ("We recognize that the MSS Above 1 GHz service is new and, as yet, commercially unproven service and that applicants without substantial internal assets may have difficulty obtaining the \$97 million to \$2 billion in financing they project is needed to construct and launch their space segments. We cannot, however, allow the orbit-spectrum resource to be tied up while these financing efforts are undertaken, with no assurance that they will be fruitful.").

^{8/} Big LEO Report and Order, 9 FCC Rcd at ¶ 30.

^{9/} Indeed, Section 257 would appear to require the Commission to preserve its public interest determination. According to Section 257, the Commission must eliminate market entry barriers for small businesses while still promoting the policies and purposes of the Communications Act including the "promotion of the public interest, convenience, and necessity." 47 U.S.C. § 257(b). Accordingly, MCHI cannot expect the Commission to adopt a financial standard which is contrary to the public interest.

^{10/} MCHI Comments at ii, 4.

Commission, allowed Norris to "warehouse" an orbital slot for over four years.^{11/} It is not in the public interest to risk warehousing scarce Big LEO MSS spectrum in a similar manner, particularly where other qualified providers are present. Accordingly, the Commission should not provide MCHI with a waiver of its financial qualification rules.^{12/}

III. A STRINGENT FINANCIAL STANDARD IS NECESSARY FOR BIG LEO MSS SYSTEMS

Contrary to MCHI's comments, the Big LEO MSS financial standard is not inequitable and "exclusionary" towards small businesses but instead reflects the business realities of the intensely competitive satellite market.^{13/} The Commission should reject MCHI's most recent arguments advocating a more flexible Big LEO MSS financial standard for two reasons. **First**, the adoption of a more "flexible" standard or the granting of a waiver would not be in the public interest because it will encourage warehousing of scarce spectral resources and contribute to the delay in the delivery of competitive MSS service to the public. **Second**, the Big LEO MSS standard already contemplates the participation of small businesses in the Big LEO MSS industry.

^{11/} The International Bureau quite appropriately withdrew this orbital slot from Norris earlier this year. See Norris Satellite Communications, Inc., DA 96-363 (rel. March 14, 1996).

^{12/} Contrary to MCHI's suggestions, the enforcement of construction milestones is not a sufficient "tool to prevent warehousing" of spectrum. MCHI Comments at 12. The Commission recognized as much in the Big LEO Report and Order when it correctly stated that "[w]hile system implementation milestone requirements will provide a mechanism by which to revoke the licenses of those entities that are not capable of going forward, this process takes considerable time and can delay qualified entities from implementing systems and providing service to the public." Big LEO Report and Order, 9 FCC Rcd at ¶ 30 (footnotes omitted). Requiring applicants to demonstrate their financial commitment upfront is the only way to prevent speculation and not to "delay qualified entities from implementing systems and providing service to the public." Id.

^{13/} MCHI Comments at ii, 3.

A. A Less Stringent Big LEO MSS Financial Standard Is Not In The Public Interest

The adoption of a less stringent financial standard or a waiver for MCHI would not be in the public interest. As the Commission acknowledged in the Big LEO Report and Order, "a strict financial requirement is warranted for the Big LEO service" because the high cost to implement the service is likely to cause underfinanced applicants to "tie up spectrum for years . . . contrary to the public interest."^{14/} Section 257 does not require the Commission to ignore these public interest concerns when formulating and enforcing its financial standard for the Big LEO MSS systems.^{15/}

Nevertheless, MCHI still insists that pursuant to Section 257 the Commission should adopt a less stringent and more flexible financial standard, such as the standards adopted by the Commission with respect to private International Satellite Systems^{16/} and Little LEO satellite systems.^{17/} These financial standards, however, are inappropriate for Big LEO MSS.

First, the two-stage International Satellite Systems standard was not adopted in the interests of providing "flexibility" to underfinanced applicants, but because of "the uncertainty caused by the INTELSAT Article XIV(d) consultation process."^{18/} This uncertainty may no longer exist.

The 19th INTELSAT Assembly has recently adopted a presumption that no separate international satellite system interconnected to the public switched

^{14/} Big LEO Report and Order, 9 FCC Rcd 5936 at ¶ 30 (1994).

^{15/} 47 U.S.C. § 257(b).

^{16/} Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046, 1164 (1985) ("International Satellite Systems Order").

^{17/} In the Matter of Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, 8 FCC Rcd 8450 (1993). See MCHI Comments at 9-10.

^{18/} International Satellite Systems Order, 101 F.C.C.2d at 1165 n.152.

telephone network whose circuit capacity is below the threshold of 8,000 64 kbps equivalent bearer circuits will cause significant economic harm to the INTELSAT system.^{19/} Accordingly, the Commission's reasoning for a two-stage financial standard has disappeared, and the Commission's abandonment of the two-stage financial standard in its DISCO I Order supports this conclusion.^{20/} As the Commission correctly reasoned in the DISCO I Order, the public interest in promoting the interests of small businesses by adopting a less stringent financial standard did not outweigh the Commission's "primary obligation" to

ensure that the U.S. public has available to it the widest range of satellite service offerings from the greatest number of competitors possible. Our repeated experience is that applicants without ready access to the needed financing have difficulty obtaining that financing, and that their attempts are often unsuccessful. This has allowed applicants to hold orbital resources to the detriment of others willing and able to go forward immediately.^{21/}

There is no reason for the Commission to ignore similar concerns when reviewing Big LEO MSS applications.

Second, the relaxed financial standard adopted for the Little LEO satellite systems is not applicable to Big LEO MSS systems. For Little LEOs, the Commission

^{19/} See In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, 10 FCC Rcd 7789, 7792 n.21 (1995) ("DISCO I NPRM") (noting recent INTELSAT Assembly action raising the threshold to 8,000 64 kbps equivalent bearer circuits). Moreover, it is the United States' position that this threshold should be raised even further, if not eliminated, in the near future. Id. at 7792 (United States has a goal of complete elimination of all interconnection restrictions by January 1997).

^{20/} Id. at 7795 ("[T]he recent changes in the Intelsat Article XIV(d) process have removed most of the uncertainty with respect to gaining consent from foreign countries and completing consultation successfully."). See also In the Matter of Amendment to the Commission's Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems, FCC 96-14 at ¶¶ 35-43 ("DISCO I Order").

^{21/} Id. at 40.

was willing to allow applicants to satisfy their financial qualifications by demonstrating sufficient financial assets to construct, launch, and operate a "minimum two-satellite system for one year."^{22/} The Commission, however, agreed to this relaxed standard not simply because the Little LEO systems were a "new" and "unproven" service,^{23/} but because the Commission was confident that a Little LEO applicant could provide some of their proposed services with as few as two satellites.^{24/} In contrast, a Big LEO MSS system (even MCHI's) cannot provide global MSS services with only two operational satellites.^{25/} Accordingly, the relaxed two satellite financial standard for Little LEOs is inapplicable to Big LEO MSS systems.

B. Small Businesses May Participate In Providing Big LEO MSS Services

MCHI's comments gives the incorrect impression that small businesses are entirely shut out of the Big LEO MSS market. As the Commission recognized in the Big LEO Report and Order, however, a stringent financial standard for other satellite services

has not prevented smaller firms from participating in the satellite services market because ownership of a space station is not mandatory. Space station capacity can be leased or bought and earth stations can be acquired at relatively low costs.^{26/}

^{22/} Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile-Satellite Service, NPRM, 8 FCC Rcd 6330, 6333-34 (1993) ("Little LEO NPRM").

^{23/} MCHI Comments at 10.

^{24/} Little LEO NPRM, 8 FCC Rcd at 6334.

^{25/} MCHI Comments at 7 ("MCHI's business plan is based on the satellite system's unique constellation design (patent pending) which permits initiation of commercial service after eight satellites are launched.").

^{26/} Big LEO Report and Order, 9 FCC Rcd at ¶ 26 n.36.

In this manner, MCHI and other small businesses unable to satisfy the Commission's rules can participate in the Big LEO MSS market.

IV. CONCLUSION

The stringent financial standard for Big LEO MSS systems is not intended to place barriers in the way of participation by small businesses. Instead, a stringent financial standard is intended to facilitate prompt use of spectral resources and prompt delivery of competitive MSS service to the public. A less stringent financial standard would compromise the achievement of these public interest goals. Accordingly, the Commission should reject the arguments of MCHI and Orion which seek the adoption of a more lenient financial standard for satellite systems. In particular, the Commission should reject MCHI's request to revise the Big LEO MSS standard or grant MCHI a waiver of the Commission financial standards.

Dated: October 11, 1996

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Sandra R. Hammond-Murdico, do hereby certify that a copy of the foregoing **Motorola's Reply Comments** have been sent, via first class mail, postage prepaid (or as otherwise indicated), on this 11th day of October, 1996 to the following:

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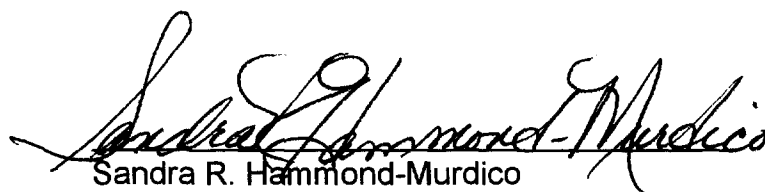
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